Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

ROGER M. LINDMARK,

Petitioner,

v.

PENNSYLVANIA BOARD OF LAW EXAMINERS,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do the First Amendment freedoms of speech and petition protect a Bar applicant from being denied admission to practice as a lawyer on the basis that letters he wrote to the state supreme court and its Board of Law Examiners criticizing the fairness of the Board's actions in handling his application contain "false accusations," without the Board's bearing the burden of proving both falsity and petitioner's "actual malice"?

2. Does the Due Process Clause guarantee a Bar applicant reasonable advance notice of the charges against him and a right to confront the sources of adverse information, when he is denied admission to practice on the basis of specific past conduct said to violate a Rule of Professional Conduct, as made applicable to Bar applicants by the state's Bar Admission Rules, and must any denial also be based on substantial evidence?

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* LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties (the petitioner, Roger M. Lindmark, Esquire, and the respondent, the Pennsylvania Board of Law Examiners).

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

ROGER M. LINDMARK respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of Pennsylvania, entered on January 28, 1994, denying review of the Adjudication of the state's Board of Law Examiners, denying him admission to practice law in the courts of Pennsylvania.

OPINIONS BELOW

The Order of the Pennsylvania Supreme Court denying review of the adverse Adjudication of the state's Board of Law Examiners, filed on January 28, 1994, is not yet published. The Adjudications of the Pennsylvania Board of Law Examiners are not published. These are Appendices C and E.

JURISDICTION

The Order of the Pennsylvania Supreme Court denying review of the Adjudication filed by its Board of Law Examiners was filed January 28, 1994. App. A. This petition is filed within 90 days thereafter. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1257(a).

RULES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Pennsylvania Bar Admission Rules provide, in pertinent part:

RULE 203. ADMISSION OF GRADUATES OF ACCREDITED AND UNACCREDITED INSTITUTIONS

(a) Bar Examination. The general requirements for permission to sit for the bar examination are:

(1) Receipt of an undergraduate degree from an accredited college or university or the receipt of an education which, in the opinion of the Board, is the equivalent of an undergraduate college or university education.

(2)(i) Except as provided in subparagraph 2(ii) of this Rule, completion of the study of law at and receipt without exception of an earned Bachelor of Laws or Juris Doctor degree from an accredited law school. See Rule 204 (relating to admission of graduates of foreign institutions) for standards applicable to graduates of foreign law schools; or

(ii) Completion of the study of law at and receipt without exception of an earned Bachelor of Laws or Juris Doctor degree from an unaccredited law school located within the boundaries of the United States of America, provided that the applicant is a member of the bar of a reciprocal state and meets the following qualifications:

(A) Presentation of a certificate from the highest court or agency of such state having jurisdiction over admission to the

bar and the practice of law stating that the applicant is in good standing at the bar of such court or such state.

(B) Presentation of proof satisfactory to the Board that the applicant, while continuously engaged in the practice of law in any state or states outside of this Commonwealth and subsequent to admission in a reciprocal state, has for a period of five years:

(i) practiced law in a reciprocal state or states outside this Commonwealth; or

(ii) engaged full-time in the teaching of law at one or more accredited law schools in the United States; or

(iii) served on active duty in the United States military service, as a judge advocate or law specialist, as those terms are defined in the Uniform Code of Military Justice, 10 U.S.C. Sec. 801, as amended, regardless of the location of the service.

Service under subparagraphs (i), (ii) and (iii) may be combined to satisfy the five year service requirement of this Paragraph.

(3) Absence of prior conduct by the applicant which in the opinion of the Board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth.

(b) Admission to the Bar. The general requirement for admission to the bar of this Commonwealth is satisfactory completion of the bar examination administered by or under the authority of the Board.

Amended effected April 25, 1980; amended Dec. 17, 1981, effective 30 days after Jan. 9, 1982; amended effective June 30, 1988; Aug. 22, 1986.

RULE 222. REVIEW OF OTHER BOARD DETERMINATIONS

(a) General Rule. Except as prescribed by Rule 221 (relating to marking of bar examination papers) any final determination of the Board may be reviewed by the Supreme Court.

(b) Preliminary Procedures. Any person desiring to seek judicial review of a determination of the Board shall, within 30 days after service of notice of such determination, file with the Board a written notice of intention to seek judicial review thereof. Not later than 60 days after the filing of such notice the Board shall enter and serve:

(1) A formal adjudication complying with the provisions of Rule 1925 of the Pennsylvania Rules of Appellate Procedure (relating to opinion in support of order).

(2) A list of all documents, transcripts of testimony, if any, exhibits and other materials comprising the record before the Board in the matter.

(c) Filing Petition for Review. The entry of the formal adjudication as prescribed in Subdivision (b) of this rule shall be deemed the entry of a quasi-judicial order for the purposes of the Pennsylvania Rules of Appellate Procedure and a petition for review of such order may be filed with the Prothonotary within the time and in the manner prescribed by such rules. Upon service of the petition for review the Board shall forthwith file the record in the matter with the Prothonotary.

* * *

(f) Review and Action by Supreme Court. The Supreme Court shall review the record and enter an appropriate order. Unless otherwise ordered, matters arising under these rules will be considered without oral argument.

The Pennsylvania Rules of Professional Conduct provide, in pertinent part:

RULE 8.2 STATEMENTS CONCERNING JUDGES AND OTHER ADJUDICATORY OFFICERS

* * *

(b) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officers.

* * *

The First and Fourteenth Amendments to the United States Constitution provide, in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech . . . or the right of the

people . . . to petition the government for a redress of grievances.

No state shall . . . deprive any person of . . . liberty, or property without due process of law.

STATEMENT OF THE CASE

By letter dated January 22, 1993, the respondent Pennsylvania Board of Law Examiners notified the petitioner, Roger M. Lindmark, of its decision to deny him admission to the Pennsylvania Bar, on the ground that he had failed to demonstrate an "[a]bsence of prior conduct which in the opinion of the Board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth," as required by Pennsylvania Bar Admission Rule (Pa.B.A.R.) 203(a)(3). App. B2. The Pennsylvania Supreme Court upheld that determination. App. A.

Petitioner had been denied admission in 1991, after his initial hearing. App. D, E. On December 11, 1992, as directed by the state supreme court, respondent held a second hearing with respect to petitioner's application for admission to practice.[1] Three letters written by petitioner in 1992 were among the exhibits considered at the hearing, as were 19 supportive character reference letters offered by petitioner. At the 1992 hearing, the respondent

[1] The date of the hearing is misstated in the Adjudication as December 12, 1992. App. C2.

also questioned petitioner about three letters he had written in 1982, when he was a law student, which had resulted in discipline against him by the school in 1983.

After petitioner notified the respondent Board of his intention to seek judicial review of its decision, the respondent filed an Adjudication, dated September 21, 1993, stating its reasons in support of its decision, as required by Pa.B.A.R. 222(b)(1). App. C. Under Pennsylvania law, the state supreme court's January 28, 1994, denial of review, App. A, is tantamount to a summary affirmance. *See* 42 Pa.Cons.Stat. § 725(4); Pa.B.A.R. 222(f) (review jurisdiction is compulsory).

In its 1993 Adjudication the respondent stated two reasons why it had denied petitioner admission to the Bar:

> The Board concludes that, except for Applicant's admission to the California Bar, there have been no substantive changes in the circumstances or in Applicant's character that would justify a reversal of the denial of Applicant's application for admission to the Pennsylvania bar.
>
> * * *
>
> [T]he issues . . . pertaining to his character were not resolved in his favor by the California courts.
>
> In addition, Applicant's intemperate and unprofessional conduct, including unfounded accusations against the Board, during the period since the prior Adjudication demonstrate [sic] that the passage of a decade has not modified his character and fitness to practice law, as measured by the standards of this Commonwealth.

App. C7-C8. The second reason is the more important to this certiorari petition.

The respondent's mention of "the passage of a decade" was a reference to the 1982-83 incidents. Placed in context, taking the facts essentially as found by respondent in its first Adjudication, these were as follows. First, respondent found that the petitioner had criticized a fellow student, one Victoria Gray, in a letter to the Dean of Pepperdine Law School, dated August 2, 1982, because Ms. Gray had failed to support a challenge he had mounted to the grading system in a particular course at the law school. App. E6. The Board also found that petitioner had "made certain misrepresentations to the Law School and to University [a]uthorities[.]" App. E8. Second, the Board determined that after petitioner was not chosen for a job with Southern California Edison Co., for which he had interviewed, he had written a letter, dated August 11, 1982, to the vice-president and General Counsel of the company criticizing the interviewer and asking to be repaid his out-of-pocket expenses, a request the recipient called "incredible and outrageous." App. E6. Third, respondent found, petitioner had "intentionally misrepresented his class standing in an attempt to gain employment[,]" in a letter to Southern California Edison dated July 27, 1982. App. E5 (misstating date of letter as "12/27/90").

In its 1991 Adjudication, respondent further noted that petitioner had been placed on disciplinary probation by the Dean of Pepperdine Law School, by letter dated November 29, 1982. App. E4. That letter had offered eight reasons in support of the disciplinary action, and concluded that petitioner had "established [a pattern] of

misrepresentation, outrageous attacks upon other people, intimidation, and irresponsible behavior . . . inconsistent with the values and standards of Pepperdine University School of Law." App. E17. Petitioner appealed the Dean's decision to impose discipline to an *ad hoc* faculty committee, which determined, by Memorandum dated February 9, 1983, that the sanctions imposed were justified. App. E19-20. Petitioner appealed the committee's decision to Pepperdine Law School's Executive Vice-President, who upheld the committee's decision on September 16, 1983. App. E5.

In May, 1983, petitioner received a J.D. degree from Pepperdine. In October, 1983, he filed a lawsuit in the Superior Court of California against Pepperdine and various officials, claiming, *inter alia*, breach of contract and libel. The relief sought was expunction from his record of the disciplinary action imposed by the law school. A nonsuit was entered against him after trial, and petitioner appealed.[2]

Also in October 1983, petitioner filed a lawsuit in the California Superior Court against an Associate Dean of Pepperdine, seeking damages for assault and battery and intentional infliction of emotional distress. Petitioner was unsuccessful in that lawsuit in the Superior Court and the Court of Appeal; the California Supreme Court denied

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[2] As of the time of his second adjudicatory hearing in Pennsylvania, in December 1992, that appeal had still not been decided. On March 11, 1993, however, the California Supreme Court denied Mr. Lindmark's petition for review. *Lindmark v. Pepperdine Univ.*, Dkt. No. S030849 (Cal., filed 3/11/93).

review. App. C4; *Lindmark v. McGoldrick*, Dkt. No. S013125 (Cal., filed 1/17/90).

In 1990, petitioner first sought admission to the Pennsylvania Bar. At that time, he had not yet been admitted to practice in California. Petitioner had a hearing before the respondent Board, and in 1991 was denied permission to sit for the Pennsylvania bar examination on character and fitness grounds, pursuant to Pa.B.A.R. 203(a)(3), quoted above. The specific reason given for denial was that petitioner's actions and conduct while he was a law student at Pepperdine, actions he continued to assert had been correct and appropriate, would constitute infractions of the Pennsylvania Rules of Professional Conduct if he were a lawyer. App. E8-E9.

Petitioner appealed the Board's first Adjudication to the Pennsylvania Supreme Court, as was his right under Pa.B.A.R. 222. By Order dated May 16, 1991, the state supreme court denied that petition for review, "without prejudice to petitioner to file for reconsideration if the California courts resolve the issues pertaining to his character and fitness in his favor." App. D. A petition for reconsideration of that order was denied on July 26, 1991.

By letter dated December 2, 1991, the California Committee of Bar Examiners, an arm of the state supreme court, notified petitioner of their determination that petitioner did satisfy the moral character requirement of the Rules Regulating Admission to Practice Law in California. Petitioner thereafter passed the February 1992 California bar examination, and he was admitted to the California Bar on June 8, 1992. The Clerk of the Supreme Court of California issued a certificate to Mr. Lindmark,

dated September 27, 1993, noting his admission and membership in good standing to the Bar of the state of California. *See* App. C4.

On December 31, 1991, petitioner sought reconsideration of his petition for review of the respondent's first Adjudication, arguing that he had now satisfied the condition of the denial without prejudice, in that his satisfaction of California's character and fitness standards constituted a determination by the California courts in his favor of "the issues pertaining to his character and fitness." App. D. By Order dated February 11, 1992, the Pennsylvania Supreme Court granted relief, stating, in full, that "the Petition for Reconsideration is granted." App. F. By Order dated April 22, 1992, the Pennsylvania Supreme Court permitted petitioner to sit for the next scheduled Bar Examination. App. G. Petitioner took the examination in July, 1992, and passed. The state supreme court then instructed the respondent to hold the second hearing, which resulted in the second and final Adjudication.[3]

Before his second hearing, petitioner wrote two letters to the Executive Director and other members of the respondent, requesting specific notice of the charges against him and of the conduct into which inquiry would be made. The respondent, through its counsel, responded that the conduct on which the initial denial was based was revealed in its prior Adjudication and discussed in the record, which petitioner had a right to review and

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[3] Petitioner was not notified of this instruction and does not know in what form it was given or when.

copy, and that the respondent Board was not required to provide more specific notice. Petitioner objected to the inadequate provision of notice by further letter and at the hearing, but the respondent maintained its position. Tr., 12/11/92, at 4-7.

In support of its adverse, 1993 conclusion stemming from the 1992 hearing, the respondent claimed that its determinations at petitioner's first Adjudication, in 1991, had been borne out by petitioner's conduct since that time. App. C9. Those determinations had been that petitioner's "actions and judgment would be similar" (in 1991) if he were involved in the same matters at that time as those "in which he acted, in 1982 and 1983," and that this behavior demonstrated an "inability to accept adverse decisions with decorum, self-control and good sense." App. E8-E9. Respondent asserted that this conduct was contrary to Pennsylvania Rule of Professional Conduct (Pa.R.Prof.Cond.) 8.2(b), as made applicable to Bar applicants by Pa.B.A.R. 203(a)(3), quoted above. App. C9. Rule 8.2(b) provides, "A lawyer shall not make false accusations against a judge or other adjudicatory officers."

In coming to the determination that the passage of a decade had not modified petitioner's fitness to practice law, the respondent Board relied in part on three letters that petitioner had written in May of 1992, following the first Adjudication and petitioner's unsuccessful appeal. The first of these, dated May 1, 1992, was addressed to respondent's then-Chair. This letter complained of harassment by the Board, in knowing violation of petitioner's constitutional rights. *See* App. C6. Petitioner's second letter, dated May 5, 1992, also to the respondent

and its Chair, stated that respondent owed petitioner $1,728.50, which petitioner said was the cost of appealing from the first Adjudication. *See* App. C6-C7.

The third letter, dated May 19, 1992, was addressed to the Chief Justice and Associate Justices of the Pennsylvania Supreme Court. The letter complained about the respondent's conduct in connection with the first Adjudication and requested that the state supreme court enter an order that petitioner's character is not an impediment to his practicing law in Pennsylvania. The letter also asked that the court investigate the respondent and/or its Executive Director. *See* App. C7. The respondent apparently also concluded that certain of petitioner's answers to questions at the hearing and a statement he made in his 1992 Pennsylvania Bar application were "intemperate and unprofessional." App. C8.

The respondent offered another reason to deny petitioner's admission to the Bar. This ground, which was actually the first reason stated by the Board, was its determination that the California courts had not resolved favorably to petitioner the issues pertaining to his character that had been pending there at the time of petitioner's first hearing. Such favorable resolution was the condition set by the state supreme court for reopening of petitioner's petition for review of the first Adjudication. *See* App. D. Respondent came to this conclusion based on the fact that petitioner had not been successful in either of the two lawsuits he had filed in California, one of which

was related to incidents for which he had received disciplinary probation at Pepperdine University School of Law. App. C8.[4]

After the respondent issued its final Adjudication on September 21, 1993, petitioner took a timely appeal of that decision to the Pennsylvania Supreme Court, by filing a petition for review. By Order entered January 28, 1994, the Supreme Court of Pennsylvania denied the petition without writing an opinion. App. A. The present petition for a writ of certiorari seeks review of that Order, which under Pennsylvania law and procedure has the effect of affirming respondent's underlying second Adjudication.

Preservation of federal issues. Petitioner raised the constitutional questions presented in this petition at each appropriate stage of the state court proceedings. *See* Rule 14.1(h); Pa.R.App.P. 302(a). Specifically, he objected on federal constitutional grounds at the hearing to the use against him of letters he had written. He reiterated this objection in his brief before the state supreme court, challenging the reasons given to deny him admission to the Pennsylvania Bar. Likewise, prior to the hearing petitioner requested notice of the charges against him; he objected on this ground at the hearing and renewed the point in his brief before the court below.

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[4] The Board did not attempt to explain how it could take this view after petitioner's motion to reconsider, contending that his admission to practice in California necessarily satisfied the state supreme court's condition, had been granted by that court. *See* App. F; *see also* App. G (specifically permitting petitioner to sit for the Bar examination).

REASONS FOR GRANTING THE WRIT

This Court has not addressed the free speech and due process rights of Bar admission applicants in nearly a quarter of a century, and when it last attempted to do so, the Court was sharply divided and could not muster a majority for most of its opinions. See *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *In re Stolar*, 401 U.S. 23 (1971); *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154 (1971). The concurring and dissenting Justices in those cases questioned, *inter alia*, whether the pluralities had overruled or merely distinguished such prior Bar admission decisions as *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961) ("*Konigsberg II*"), and *In re Anastaplo*, 366 U.S. 82 (1961). Compare also *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957) ("*Konigsberg I*"), and *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957). Needless to say, there have been substantial doctrinal developments in constitutional law since 1971. The record and issues in the present case suggest that certiorari should be granted to revisit those important questions.

1. The decision below presents an important First Amendment issue concerning the free speech and Petition Clause rights of Bar applicants.

Petitioner was denied admission to the Pennsylvania Bar in 1993, despite his admission to practice in California and his having passed the Pennsylvania bar examination, on the basis that he had failed to demonstrate an "[a]bsence of prior conduct which in the opinion of the Board indicates character and general qualifications (other than scholastic) incompatible with the standards

expected to be observed by members of the bar of this Commonwealth," as required by Pennsylvania Bar Admission Rule (Pa.B.A.R.) 203(a)(3). App. B2. Respondent claimed that petitioner continued to demonstrate, "during the period since the prior Adjudication" in 1991, App. C8, an "inability to accept adverse decisions with decorum, self-control and good sense." App. C9, *quoting* App. E9. The respondent's Adjudication relied on a particular "standard expected to be observed by members of the bar," to wit, Pa.R.Prof.Cond. 8.2(b). App. C9. That Rule of Professional Conduct provides, "A lawyer shall not make false accusations against a judge or other adjudicatory officers."

Petitioner's statements which the respondent would characterize as "false accusations against a judge or other adjudicatory officers" consist of parts of three letters that he had written in May of 1992, following the issuance of respondent's first Adjudication and petitioner's unsuccessful appeal. Two of these had been sent to the respondent Board and one to the justices of the state supreme court. All criticized as unfair and unconstitutional their treatment of him in connection with the Bar application process. The respondent apparently also viewed certain of petitioner's answers to questions at the hearing and a statement he made in his 1992 Pennsylvania Bar application as "intemperate and unprofessional," App. C8, but it is not clear whether separate weight was given to these statements, much less whether they were treated as potentially disqualifying.

This Court has long held that applicants for admission to the Bar do not forfeit their First Amendment

rights in connection with the "character and fitness" process. *Schware, supra,* 353 U.S. at 239; *Konigsberg I, supra,* 353 U.S. at 268-69. Of course, if petitioner's comments could fairly be described as "false," as required by Pa.R.Prof.Cond. 8.2(b), and if this determination had been made by a fair procedure and on substantial evidence, there would be no real First Amendment question. But here, the assertions which respondent would characterize as "false" consist of petitioner's suggestions, in his letters and testimony, about the state of mind of respondent's members in denying him what he considered his due in terms of fair treatment. App. C3 (¶4), C6-C7 (¶¶ 12-14). Petitioner properly and candidly admitted that he recognized some of these statements as "intemperate" or "hotheaded." App. C7. However, none of them can fairly be described as demonstrably "false," and certainly not on the basis that respondent would use – simply to demand that petitioner supply concrete proof of respondent's members' states of mind, and then, in the obviously predictable absence of such proof, to call the assertions unproven and thus false.

The First Amendment demands that when presumptively protected "speech" or "petition," such as petitioner's complaints to respondent and the state supreme court about the fairness of their treatment of him, is to be used to justify a penalty on the basis of alleged "falsity," the burden must be on the respondent to prove "actual malice" by clear and convincing evidence. In other words, respondent must prove that the statements are in fact false (and not merely overstated assertions of opinion) and that petitioner knew them to be false or acted

with reckless disregard for their truth or falsity. See *Herbert v. Lando*, 441 U.S. 153, 175-76 (1979); *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 55 (1971) (plurality); *Rosenblatt v. Baer*, 383 U.S. 75 (1966); *New York Times v. Sullivan*, 376 U.S. 254 (1964). These constitutional standards are fully applicable to criticism – even harshly worded criticism – of judges and their decisions. See *Garrison v. Louisiana*, 397 U.S. 64 (1964); *In re Sawyer*, 360 U.S. 622 (1959) (plurality); *Konigsberg I, supra*, 353 U.S. at 268-69 & nn. 27, 29. Thus, the First Amendment limitations articulated in *New York Times v. Sullivan* should have been applied to petitioner's letter to the state supreme court complaining about the respondent Board, which it controls, as well as to his communications with respondent itself. The letter, at least, was also protected by the Petition Clause, subject to *New York Times* privilege analysis when "falsity" is asserted. See *McDonald v. Smith*, 472 U.S. 479, 485 (1985). The record in this case utterly fails that well-settled test.

The failure of the court below and of the respondent Board to apply a *New York Times v. Sullivan* standard to the determination of falsity in this context creates a division of opinion between state supreme courts on this point of constitutional law. In *Siegel v. Committee of Bar Examiners*, 10 Cal.3d 156, 110 Cal.Rptr. 15, 514 P.2d 967 (1973) (per curiam), a question arose as to whether the applicant was lying to the bar examiners when he described certain speeches he had given as a student radical. The California Supreme Court held that the burden of proof cannot be placed on the applicant, but rather that:

> a just and constitutional reconciliation of the transcendent values of free expression and the legitimate needs of official inquiry in this area is effected by the principles of interpretation applicable to cases of this kind [that is, the *New York Times* principle]. Those principles, as we have explained, require that when two or more reasonable inferences may be drawn from proved facts, the inference favoring the applicant must be accepted.

514 P.2d at 981-82. This case thus literally involves the most direct conflict possible between two state courts' interpretations and applications of the U.S. Constitution. In California, petitioner not only would prevail, but actually did prevail – he has been admitted to practice there. But in Pennsylvania, he has been refused. This Court must resolve that conflict.

Petitioner's challenged comments in this case were all directed to the adjudicatory officials themselves. There is no indication that petitioner sought to publicize his criticisms of the Bar admission process or that his comments in that or any other way tended to impair or undermine either the ability of the respondent or of the state supreme court to render a fair determination or to maintain public respect and support. Thus, to whatever extent the First Amendment rights of a Bar applicant may be restricted when balanced against such compelling state interests as maintaining the fairness and dignity of the judicial process, those interests are not legitimately implicated here. Compare *Gentile v. State Bar of Nevada*, 501 U.S. ___, 115 L.Ed.2d 888 (June 27, 1991) (considering First Amendment constitutionality, as applied, of

R.Prof.Cond. 3.6 restricting public extrajudicial statements likely to prejudice an adjudicative proceeding),[4] with *Bridges v. California*, 314 U.S. 252, 277 (1941) (labor leader's telegram to Secretary of Labor criticizing judge's decision in inter-union lawsuit and warning of strike held protected under Petition Clause).

Neither respondent nor the state supreme court below appears to have recognized or applied the constitutional limitations on the act of denying petitioner admission to the Bar under Pa.B.A.R. 203(a)(3) on the basis that his conduct during the application process, had it been engaged in by a lawyer, would subject him to discipline under Pa.R.Prof.Cond. 8.2(b). On this record at least, any such discipline would have been invalid on constitutional grounds.

For the foregoing reason, this Court should grant this petition for certiorari and reverse the judgment of the Pennsylvania Supreme Court denying review of respondent's refusal to admit petitioner to practice law.

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[4] In *Gentile*, this Court struck down Nevada's application of Rule 3.6 to attorney Gentile on vagueness grounds, but rejected, by a 5-4 vote, his First Amendment claim. No vagueness challenge to Pa.B.A.R. 203(a)(3), as it was applied to petitioner below, was preserved in the Pennsylvania Supreme Court. Had it been, the propriety of the denial of petitioner's application would have been highly suspect under the holding in *Gentile* in that respect as well.

2. The Adjudication of the Pennsylvania Board of Law Examiners is inconsistent with this Court's precedents holding that due process requires that a Bar applicant receive notice of the charges proposed to be used to deny him admission to practice law and a right to confrontation, and that the Board's conclusions be supported by substantial evidence.

The respondent Board denied the petitioner admission to practice law in Pennsylvania on the basis of specific misconduct, but it refused to tell him prior to the hearing what alleged conduct of his was at issue. His objection to the Board's reliance on second-hand accusations, whose sources he could not confront, was also dismissed. In addition, neither of the grounds of the respondent's Adjudication is supported by any substantial evidence. In each of these respects, respondent's refusal denied petitioner due process of law as guaranteed by the Fourteenth Amendment, as construed in the pertinent decisions of this Court. It is well settled that "the requirements of procedural due process must be met before a State can exclude a person from practicing law." *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 102 (1963). The writ should be granted to correct this further deviation from controlling precedent.

a. *Notice.* Before his second hearing, petitioner wrote two letters to the executive director and other members of the respondent Board, requesting specific notice of the charges against him and the conduct into which inquiry would be made. In his first letter, he stated, *inter alia*:

> I now write to specifically request and demand that the Board send me an enumerated list as a

> formal Notice pursuant to constitutional due process requirements of the charges, accusations, instances of wrongful conduct, immoral acts and character flaws, which the Board wishes to inquire into at said hearing. This will afford me the opportunity to meet those charges at the hearing with any necessary evidence.

Letter to respondent's Executive Director, dated Nov. 17, 1992.

The respondent replied by letter, informing petitioner that:

> Your application was initially denied by the Board on the grounds that you failed to establish the absence of prior conduct by you which in the Board's opinion indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth. Rule 203(a)(3). The instances of prior conduct on your part on which that initial denial was based were discussed in detail in filings made by the Board with the Pennsylvania Supreme Court, and duly served upon you. In addition, you were advised of your right to review your file and make copies thereof at your expense.
>
> You have requested an "enumerated list" of the matters that will be addressed at your hearing. The Board is not required to provide such a list to applicants. Nor is the Board constrained to limit its consideration at the hearing of issues relevant to your character and fitness to practice law to a predetermined list. The Board may address any relevant character issues that have arisen to date, or that are raised in the hearing.

Letter, respondent's counsel to petitioner, dated Nov. 18, 1992.

Petitioner responded by letter to respondent's counsel, dated November 23, 1992, complaining that he could not "know what to prepare for or what evidence to gather or affidavits to obtain in my defense at the hearing . . . if the board does not have to notify me of the instances of wrongdoing which it wishes to inquire into . . . . " Petitioner complained that this violated the due process notion of "fair play" and that he would note his objection at the hearing.

At the hearing, petitioner objected that "the Board has refused to give me due process notice of any charges against me prior to this hearing." Tr. 12/11/92, at 4-5. Judge Eugene H. Clarke, Jr., a member of the respondent Board who was not its Chairman and was not presiding (Chairman John S. Manos was also present), suggested that the hearing might be adjourned, to "set another hearing and send you whatever specifics you think you need." *Id.* at 6. Referring to his previous correspondence with respondent on this matter, petitioner stated that he would proceed with the hearing at that time, while noting his objection and presenting the related letters as exhibits. *Id.* Respondent's counsel then reminded Judge Clarke that petitioner had already received "every opportunity to be fully apprised of the issues that are arising in this hearing" by virtue of counsel's letter to petitioner advising him of his right to review his file, *id.* at 7, and Judge Clarke stated his awareness of that. *Id.* At the hearing, the Board inquired in depth into the letters petitioner had written to it after his first Adjudication. At no

time had respondent notified petitioner that these letters would be a subject of inquiry at the hearing.

In *Willner v. Committee on Character and Fitness, supra,* this Court held that procedural due process under the Fourteenth Amendment requires a fair hearing before an applicant may be denied admission to the Bar of a state. In the course of its analysis, the Court recognized that "notice of . . . the matters the Committee was considering" is "clearly" a basic element of the process which is due in this setting. 373 U.S. at 105. Without prior notice, an applicant has no real "opportunity to ascertain and contest the bases of the" denial. *Id.* Thus, while petitioner here was afforded an in-person hearing, as was Mr. Willner, the hearing could not serve its constitutional purpose in the absence of notice of the charges, because, as in Willner's case, the proposed grounds of denial were not disclosed in advance. In the instant case, a reading of the hearing transcript shows that petitioner came prepared to discuss his conduct of a decade earlier, which had been the basis of the respondent's 1991 decision, only to be ambushed with sharp questions about the letters he wrote in 1992. This denied him procedural due process in a manner that severely prejudiced him.

Similarly, as to the respondent's other ground for denial – the supposed lack of resolution of character issues in his favor by the California courts – petitioner came to the hearing understandably believing that the state supreme court had resolved that issue in his favor by ordering the hearing to be held at all. After all, the court had denied his initial, 1991 petition for review "without prejudice to petitioner to file for reconsideration if the California courts resolve the issues pertaining to his

character and fitness in his favor." App. D. After being approved as to "character and fitness" by the California bar examiners, petitioner did file for reconsideration, and the Pennsylvania Supreme Court granted the motion, thus seemingly resolving that issue in his favor. App. F. Without notice from respondent, petitioner could hardly be faulted for not realizing that in respondent's view, he also had to show at the hearing that his California *lawsuits* had been resolved in his favor because, in respondent's view, his "character" (although certainly not his "character and fitness") was somehow in issue there. *See* App. C4 (¶9), C8. The respondent and the court below departed without justification from this Court's controlling precedent on the subject of notice.

Despite the general discussion of respondent's impression of petitioner's personality, the ultimate grounds of denial of his application for admission to practice were quite specific: that his criticisms of respondent's conduct would subject him to discipline if they had been written and/or spoken by a lawyer, and that his character was not deemed acceptable in California. Prior to the second hearing, despite his request for notice, petitioner was not informed that either of these matters would be at issue. The petition should therefore be granted for the further purpose of clarifying the due process requirement of notice in the context of denial of Bar admission on fact-specific grounds.

b. *Confrontation.* In *Willner, supra,* this Court also held that the Fourteenth Amendment's guarantee of procedural due process requires that the state must afford an opportunity for "confrontation" of the adverse evidence before denying an applicant admission to the Bar. 373

U.S. at 103-04. In *Willner*, as here, a significant part of the evidence used to justify the adverse decision came in the form of letters alleging misconduct many years earlier, with no opportunity to confront or cross-examine the letters' authors or any other witness asserting first hand knowledge. This Court held that due process was not satisfied where "the Committee did in fact rely on these complaints, at least to some extent, in reaching its determinations." *Id.* at 106. For the same reason, the respondent's reliance, "at least to some extent," on the letter allegations concerning petitioner's 1982 conduct as a law student, *see* App. C9, over his objection as to his inability to cross-examine the actual witnesses, contributed here to a denial of due process of law.

c. *Basis in Fact.* The respondent and the state supreme court below also failed to honor this Court's controlling due process authority when they rejected petitioner's application for admission to practice law in Pennsylvania without a factual basis in the record. At least where the denial impinges on First Amendment concerns, such sufficiency review is constitutionally mandated. *Baird, supra,* 401 U.S. at 8; *Stolar, supra,* 401 U.S. at 30; *Schware, supra; Konigsberg I, supra. Cf.* W.H. Rehnquist, *The Bar Admission Cases: A Strange Judicial Aberration,* 44 A.B.A.J. 229 (1958) (discussing constitutional basis of *Schware* and *Konigsberg I*). See also *Sawyer, supra* (same review mandated for professional discipline case based on speech criticizing conduct of trial).

The discussion under Point 2.a. above of the "California character determination" question shows that the respondent's first ground for denial was entirely baseless. Petitioner's "character and fitness" were adjudicated in

his favor by California when he was admitted to practice there. The two California lawsuits concerned particular alleged causes of action arising out of his law student days at Pepperdine, and could not have "resolved" any "issues pertaining to his character," much less his "character and fitness." *See* App. D. To the extent that respondent's action was based on this ground, it had no basis at all. More important for constitutional purposes is the respondent's other ground of decision – that his letters to the respondent in 1992 and other conduct "during the period since the prior Adjudication" in 1991, App. C8, such as his statements during the hearing, established a failure to satisfy Pa.B.A.R. 203(a)(3) by constituting sanctionable conduct under Pa.R.Prof.Cond. 8.2(b). This, too, was baseless.

Regardless of how broadly Pennsylvania may interpret that Rule of Professional Conduct, nothing in this record could, consistent with the First Amendment, be called "false accusations against a judge or other adjudicatory officers." Assertions that a judge or officer's conduct is:

> wrong on [the] law . . . is of no matter; appellate courts and law reviews say that of judges daily, and it imputes no disgrace. Dissenting opinions in our reports are apt to make petitioner's speech look like tame stuff indeed. Petitioner did not say [that the decisionmaker] was corrupt or venal or stupid or incompetent.

In re Sawyer, supra, 360 U.S. at 635. Respondent's characterization as "false" of the accusations leveled by petitioner is all the more suspect because the target of that criticism was the respondent Board itself. It may not have

been politic for petitioner to tell the respondent his strong opinion of its procedures and standards, but it was not misconduct.

Nineteen lawyers who knew petitioner better than any member of the respondent Board wrote letters attesting to his good character. Respondent's Adjudication notes this fact without so much as summarizing, much less dealing with, any of their opinions. *See* App. C3 (¶5). Yet those letters speak directly to the points that seemed troublesome to respondent. For example, a former Pepperdine law professor of petitioner's, who had known him during the entire relevant time period,[5] wrote that "While I have observed him to be a resolute and determined individual who was not always given to quintessential diplomacy, I nonetheless have found him to be a gentleman of the highest integrity and trustworthiness." Likewise, another of petitioner's former Pepperdine professors[6] acknowledged that petitioner "has a tenacious personality" and "certainly is a fighter," while adding that "I consider him a highly moral individual – someone with a strong sense of justice and a feeling of empathy for the weak and oppressed."

A California attorney who has known petitioner for over ten years[7] described him as having "a brilliant mind, work ethic and resilience to adversity. . . . In my humble

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[5] Michael Patrick Murray, Esq., now of Fairfax, Virginia, letter dated Nov. 17, 1992.

[6] Prof. Daniel J. Morrissey, now of the University of Tulsa College of Law, letter dated Nov. 17, 1992.

[7] Stephen Austin Cain, Esq., of Walnut Creek, California, letter dated Nov. 17, 1992.

opinion, if anyone has what it takes to be an effective trial attorney, it is Roger Lindmark. . . . The last place I would want to be is on the wrong side of the law with Roger Lindmark blowing the whistle." As this Court stated in *Konigsberg I*:

> A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated – free to think, speak, and act as members of an Independent Bar. In this case we are compelled to conclude that there is no evidence in the record which rationally justifies a finding that Konigsberg failed to establish his good moral character . . . .

353 U.S. at 273. "There is not one word in this entire record that reflects adversely on Mr. [Lindmark]'s moral character or his professional competence." *In re Stolar, supra,* 401 U.S. at 30. The judgment below lacks any basis in fact, and therefore denied petitioner due process of law.

For this reason as well, this Court should grant the writ of certiorari and reverse the judgment of the Supreme Court of Pennsylvania.

CONCLUSION

For each of the foregoing reasons, petitioner ROGER M. LINDMARK prays that this Court grant his petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania upholding the refusal of the respondent Pennsylvania Board of Law Examiners to allow him admission to practice law in Pennsylvania.

Respectfully submitted,

PETER GOLDBERGER
PAMELA A. WILK
Attorneys for Petitioner

April 26, 1994.

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

ROGER M. LINDMARK, Petitioner	:	No. 117 E.D. Misc. Dkt. 1993
v.	:	
PENNSYLVANIA BOARD OF LAW EXAMINERS	:	

ORDER

PER CURIAM:

AND NOW, this 28th day of January, 1994, the Petition for Review and request for oral argument are denied.

Mr. Justice Montemuro is sitting by designation as Senior Justice pursuant to Judicial Assignment Docket No. 94 R1800, due to unavailability of Mr. Justice Larsen, see No. 127 Judicial Administration Docket No. 1, filed October 28, 1993.

TRUE COPY FROM RECORD
Attest: January 28, 1994

/s/ Patricia Johnson
PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

APPENDIX B

Supreme Court of Pennsylvania
(seal)
Pennsylvania Board of Law Examiners

[Names of Board Members Omitted]

January 22, 1993

Roger Lindmark
141 North Hamilton Drive
Suite C
Beverly Hills, CA 90211

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Mr. Lindmark:

I regret to inform you that subsequent to a hearing held pursuant to Pa. B.A.R. 213(b), the Pennsylvania Board of Law Examiners has determined that you do not meet the requirements under Pa. B.A.R. 203(a)(3), for permission to sit for the February 1993 Pennsylvania Bar Examination.

Pa. B.A.R. 203(a)(3) provides that a general requirement for permission to sit for the bar examination is . . .

> Absence of prior conduct by the applicant which in the opinion of the Board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth.

The Board has determined that you do not meet this requirement.

Pa. B.A.R. 222 provides for review of Board determinations. If you wish to seek judicial review of this

determination, you must file with the Pennsylvania Board of Law Examiners, written notification of your intention to seek judicial review WITHIN THIRTY (30) DAYS OF THE DATE OF SERVICE OF THIS LETTER. Pa. B.A.R. 222(b). After the Board files its formal adjudication and designation of the record, you must file a petition for review with the Prothonotary of the Supreme Court of Pennsylvania. Pa. B.A.R. 222(c). Pennsylvania Rules of Appellate Procedure presecribe [sic] the time and manner for filing a petition for review.

Sincerely,

/s/ Patrick Tassos
Patrick Tassos
Executive Director

620 Chestnut Street Suite 674 Public Ledger Building Philadelphia, PA 19106-3466 (215) 627-3246

APPENDIX C

PENNSYLVANIA BOARD OF LAW EXAMINERS

IN THE MATTER OF THE APPLICATION OF ROGER M. LINDMARK FOR ADMISSION TO THE BAR OF THE COMMONWEALTH OF PENNSYLVANIA

ADJUDICATION

This Adjudication is filed in accordance with Pennsylvania Bar Admission Rule 222(b)(1), in support of the denial after hearing by the Board of Law Examiners of the Application of Roger M. Lindmark for admission to the Board of the Commonwealth of Pennsylvania.

Procedural History

In 1990, Applicant Roger M. Lindmark filed an application with the Board of Law Examiners for permission to sit for the July 1990 Bar Examination. After hearing, the Board denied that application on character and fitness grounds (Pa. B.A.R. 203(a)(3)), and Applicant filed a timely appeal. The Board filed an Adjudication in support of that decision with the Pennsylvania Supreme Court dated January 22, 1991 (a copy thereof is attached as Appendix A hereto).

By Order dated May 16, 1991, the Supreme Court denied Applicant's Petition for Review, without prejudice to his right to file for reconsideration if the California courts resolved issues before them pertaining to Applicant's character and fitness in his favor.

By Order dated February 11, 1992, the Supreme Court granted Applicant's second Petition for Reconsideration. By Order dated April 22, 1992, the Supreme

Court granted Applicant permission to sit for the July 1992 Bar Examination; his scores were to be held pending resolution of the outstanding character and fitness issues. Applicant sat for and passed that Bar Examination. The Supreme Court subsequently instructed the Board of Law Examiners to conduct a hearing on Applicant's moral character and fitness within sixty (60) days of notifying him that he had passed the July 1992 Bar Examination.

A hearing was held on December 12, 1992, before Board Chairman John S. Manos, Esquire and Board Member the Honorable Eugene H. Clarke, Jr. By letter dated January 22, 1993, Applicant was informed of the Board's denial after hearing of his application for admission. Applicant filed a timely appeal of that decision.

Revised Statement of Facts

The following factual findings are additions or revisions to the Statement of Facts contained in the Board's January 22, 1991 Adjudication (Appendix A, pp. 2-6).*

1. Applicant filed an application to sit for the July 1992 Pennsylvania Bar Examination, dated March 2, 1992. In response to Question #20, Applicant listed employments subsequent to the date of his prior hearing in 1990. He worked part-time for an unspecified period for Meyer Law Offices in Los Angeles, and he worked full-time as a law clerk for three months from March to June 1991 for Webb Law Offices in Encino, California. Under "Reason for Termination," Applicant stated, "Quit on 6-17 1991." No further

* "Appendix A" to the 1993 Adjudication is Appendix E to this certiorari petition.

employment was listed for the period between June 17, 1991 and the date of the application, March 2, 1992.

2. By letter dated October 31, 1991, Applicant was advised by the Committee of Bar Examiners of the State Bar of California that upon reconsideration the Committee had determined that his application for admission be approved as to character. The Committee did not issue a written opinion or findings.

3. In addition to the thirteen prior California bar exams that Applicant had unsuccessfully sat for, he also sat for the February 1990, 1991, and 1992 California bar exams. Applicant was successful on the February 1992 bar exam, and was admitted to the California bar on June 8, 1992.

4. In response to Question #21 of his 1992 application to Pennsylvania, Applicant stated, "I did not take any bar exam in July 1990 through the fault and cause of the Penn Board of Law Examiners." Applicant has not provided any factual basis for this statement.

5. At the December 1992 hearing, Applicant submitted nineteen (19) letters of recommendation, which the Board received as evidence.

6. As noted in paragraphs 6 and 10 of this Board's prior Adjudication, Applicant filed a lawsuit in California Superior Court in October 1983 against Pepperdine University Law School and several of its officials alleging, *inter alia*, breach of contract and libel. As relief, he requested an injunction to have the disciplinary action imposed upon him by the law school expunged from his student records. At the time of the Board's first hearing in 1990, Applicant was appealing the entry by the court in that case of a nonsuit against him and in favor of the defendants.

7. At the December 1992 hearing, Applicant stated that he was still awaiting a final decision by the appeals court. He acknowledged that the lawsuit was still unresolved, and that to date the issues had been determined against him. (Transcript, pp. 19-20.)

8. In addition to his action against Pepperdine and its officials, Applicant had filed an action against an associate dean of Pepperdine Law School in October 1983, alleging assault and battery, and intentional infliction of emotional distress. Applicant lost that suit, appealed to the California Supreme Court, and lost on appeal. (Transcript, pp. 12-13.)

9. At the time of the Supreme Court's Order denying Applicant's Petition for Review, subject to reconsideration, the two lawsuits referred to above were still pending, and the California bar officials had not made a favorable determination as to Applicant's character. The only one of these matters that has subsequently been resolved in Applicant's favor is his application to the California bar. The issues relating to Applicant's character that were raised in his two California lawsuits have not been resolved in his favor, contrary to Applicant's assertions to the Supreme Court in his Petition for Reconsideration.

10. At the December 1992 hearing, Applicant was asked by Board Counsel about his present view of the three incidents cited by the Board in its first Adjudication denying his application on character grounds.

"Q: . . . I have a question for you about the allegations that were made against you from

Pepperdine University Law School in the disciplinary proceedings . . . The first one was an allegation that you lied about your class standing in an attempt to gain employment. And [the second] was an allegation that you misused a referral from the career planning office to make incredible and outrageous demands beyond the bounds of propriety and reasonable judgment.

Do you remember those allegations?

"A: Yes.

"Q: there was also an allegation . . . that you . . . made outrageous and untrue allegations about a fellow student to the California State Bar without the slightest substantive support.

I believe that these were the three incidents that were cited by this Board in its adjudication denying your application for admission. . . .

* * *

"Q: Now, it's been over ten years or about ten years since those incidents occurred?

"A: Alleged incidents.

"Q: Upon reflection do you believe than any of your actions that led to the imposition of these disciplinary sanctions by Pepperdine Law School, your actions, were improper or unjustified?

* * *

"A: I might characterize them as a bit intemperate, but I don't think there was anything improper with them. . . . "

(Transcript, pp. 20-22, 24.)

Applicant also characterized his accusations against his fellow student as "irrelevant picky issues." (Transcript, p. 33.)

11. Most of the December 1992 hearing involved lengthy and redundant objections by Applicant to the questions asked of him by the Board and Counsel. (*See, e.g.*, Transcript, pp. 3-7, 22-24, 28-37, 41, 45-47, 57-61.)

12. During the hearing, the Board members questioned Applicant about three letters he had written in May 1992. The first was dated May 1, 1992, addressed to then-Chairman Judge Carol K. McGinley (Exhibit B-3 to Transcript of Hearing). In that letter Applicant accused the Board of "unprofessional, insidious, and despicable harassment and treatment." He stated that the Board's January 1991 adjudication and decision "was a blatant violation of my constitutional rights and affront to every rule of evidence known in the law of the free world[,]" and that the "Board knows this to be true."

In response to Chairman Manos's inquiry as to what evidence Applicant had for making these allegations, Applicant referred to the record, but had no other evidence on which he based his accusations. (Transcript, pp. 39-41.) Applicant admitted that he could not and did not know the mental states of the members of the Board, but that he made certain assumptions about them. (Transcript, pp. 41-44.)

13. Applicant then wrote another letter to Judge McGinley dated May 5, 1992 (Exhibit B-4), in which he demanded reimbursement from the Board for alleged costs incurred by him in pursuit of his application. As a basis for this demand, Applicant stated, "Your conduct

and decisions in delaying and frustrating my life has caused these litigation costs. In all professional decency the Board owes me the restitution of these costs."

When questioned about this letter, Applicant admitted that it could be characterized as intemperate or "hotheaded." (Transcript, pp. 49-50.)

14. Applicant then wrote a letter dated May 19, 1992 to the Honorable Chief Justice and Associate Justices of the Pennsylvania Supreme Court (Exhibit B-5). In that letter he complains that, "The Board has now expressed its intentions to once again harass and frustrate my life . . . . The Board's recent decision to withhold my scores is nothing more than a showing of malicious retaliation,. . . . The Board has now expressed a deliberate intention to obstruct my admission to the State Bar of Pennsylvania by withholding my scores provided I am successful on the [July 1992 bar] examination."

At the hearing, Applicant admitted that he was not aware at the time that he made those allegations that the Board has a policy not to release the scores of applicants unless and until a favorable determination is made as to their moral character and fitness to practice law. Nevertheless, he inferred that the Board was maliciously retaliating against him by withholding his scores pending a final, favorable determination of his character. (Transcript, pp. 50-53.)

15. The Board concludes that, except for Applicant's admission to the California Bar, there have been no substantive changes in the circumstances or in Applicant's character that would justify a reversal of the denial of

Applicant's application for admission to the Pennsylvania bar.

Discussion

Although Applicant contended to the Supreme Court in his Petition for Reconsideration that the issues pertaining to his character which were pending before the California courts had been resolved in his favor, his testimony at the December 1992 hearing establishes otherwise. Applicant had filed two lawsuits arising out of the incidents at Pepperdine University School of Law for which he was academically disciplined.

His action against an associate dean for assault and battery and intentional infliction of emotional distress was dismissed with a nonsuit judgment against him.

His action to have the academic discipline imposed on him removed from his student records was also decided adversely to him.

The Board therefore concludes that the issues raised in those cases pertaining to his character were not resolved in his favor by the California courts.

In addition, Applicant's intemperate and unprofessional conduct, including unfounded accusations against the Board, during the period since the prior Adjudication demonstrate [sic] that the passage of a decade has not modified his character and fitness to practice law, as measured by the standards of this Commonwealth.

In its January 1991 Adjudication, the Board concluded:

> [I]f Mr. Lindmark were a lawyer today, and were involved in the matters analogous to those in which he was involved and in which he acted, in 1982 and 1983, his actions and judgment would be similar, and would constitute infractions of the "Rules of Professional Conduct" which indicate the character and general qualifications which are expected to be observed by the Bar of this Commonwealth.
>
> Mr. Lindmark's inability to accept adverse decisions with decorum, self-control and good sense fails to comport with the requirements of Rule of Professional Conduct . . . 8.2(b): "A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

Mr. Lindmark is now a lawyer, and his actions since the prior Adjudication have borne out the Board's assessment.

Adjudication

Now, September 21, 1993, the Pennsylvania Board of Law Examiners adjudicates that the Application of Roger M. Lindmark for admission to the Bar of the Commonwealth of Pennsylvania is denied.

PENNSYLVANIA
BOARD OF
LAW EXAMINERS

By: /s/ Patrick Tassos
Patrick Tassos
Executive Director

APPENDIX D

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

ROGER M. LINDMARK, Petitioner	:	No. 32 E.D. Misc.
v.	:	Dkt. 1991
PENNSYLVANIA BOARD OF LAW EXAMINERS	:	

ORDER

PER CURIAM:

AND NOW, this 16th day of May, 1991, the Petition for Review is denied without prejudice to petitioner to file for reconsideration if the California courts resolve the issues pertaining to his character and fitness in his favor.

TRUE COPY FROM RECORD
Attest: May 17, 1991

/s/ Bernice G. LaBoo
BERNICE G. LaBOO, Chief Clerk
Supreme Court of Pennsylvania
Eastern District

APPENDIX E

PENNSYLVANIA BOARD OF LAW EXAMINERS

IN RE: PENNSYLVANIA BAR APPLICATION OF ROGER M. LINDMARK BEFORE THE PENNSYLVANIA BOARD OF LAW EXAMINERS

ADJUDICATION PURSUANT TO PA. B.A. RULE 222(b)(1)

After receipt of notice by the Acting Director of the Board of Law Examiners that his application to sit for the Pennsylvania bar examination had been denied, applicant, Roger M. Lindmark, 141 North Hamilton Drive, Suite C, Beverly Hills, California 90211, timely requested hearing before the Board.

Thereafter, after hearing on September 24, 1990 (Board members present at the hearing: Honorable Carol McGinley, Honorable Eugene Clarke, Honorable Gordon Daghir, Harold Rosenn, Esquire, Christine Donohue, Esquire, and John S. Manos, Esquire), the Board denied Mr. Lindmark's application from which determination, and in accordance with Pa. B.A.R. 222(b)(1), applicant filed a timely notice with the Board, of his intention to seek judicial review.[1]

This formal adjudication is in response to the Board's requirements under Pa. B.A.R. 222(b)(1).

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[1] The applicant addressed his "intention to seek judicial review" to the Executive Director and "Members of the Board," closing with the Phrase, "See you in Court." See Letter from Mr. Lindmark dated 10/31/90.

GROUNDS FOR DENIAL

The applicant was denied permission to sit for the bar examination pursuant to authority given to the Board under Pa. B.A.R. 203(a)(3).

> 203(a) Bar Examination – The general requirements for permission to sit for the bar examination are:
>
> . . . (3) Absence of prior conduct by the applicant which in the opinion of the Board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth.

STATEMENT OF FACTS

1. Academic Background of the Applicant

(a) Applicant is 39 years old, having been born June 25, 1951 in Eau Clair, Wisconsin.

(b) Applicant obtained his B.A. degree from St. John's University in Collegeville, Minnesota in June, 1974, and a Master's Degree from Long Island University, Long Island, New York, in February, 1977. In addition, applicant's application reflects that he attended St. Francis College in Milwaukee, Wisconsin, from 9/70 to 6/71, the University of New Orleans, Louisiana from 9/74 to 11/74, and New York University in New York City, from 9/76 to 1/77.

(c) The applicant obtained his J.D. Degree from Pepperdine University Law School, Malibu, California, an accredited law school, which he attended from 7/79 to

5/83. Applicant also indicates that he attended the University of Wisconsin Law School in Madison, Wisconsin, from 6/80 to 8/80.

(d) His application reveals that applicant has never resided in Pennsylvania. For the past ten (10) years, he has lived principally in California, and approximately two (2) years in Wisconsin.

2. *Prior Bar Examinations.* The applicant has taken every bar examination for February and July, in California, since July, 1983, a total of thirteen (13) examinations. He has failed on each occasion. He has taken the bar examination in February, 1990 in California and is awaiting the results of that examination.

3. *Employment.* The applicant was employed as a Law Clerk for two (2) months in 1983 and three (3) months in 1984. He was employed in the law offices of A. Tod Hinden, in Beverly Hills, California, for seven (7) months in 1984-85. His employment with Mr. Hinden was terminated because the applicant failed to file a Complaint with the Court Clerk's Office on the last day of the Statute of Limitations (N.T. Pg. 45). Applicant served as a law clerk for twenty-two (22) months in 1986-88. He served as a law clerk for attorney Nathaniel J. Friedman in Los Angeles, California, starting September, 1988, and was terminated on September 14, 1990 for failing to notify a client of a pending disposition (N.T. Pg. 5).

4. There has been no prior determination of character and fitness to practice law by the California Bar Examiners.

Applicant pointed out that since he has never passed the California bar examination, questions relating to his character and fitness to practice law have never been passed upon by the California Board of Law Examiners (N.T. Pg. 26). Specifically, the impact if any, of the facts underlying the applicant's disciplinary probation at Pepperdine Law School, as they related to applicant's fitness to practice law, and his character, have never been passed upon by the California Board of Law Examiners.

5. In a letter dated November 29, 1982, Dean of Pepperdine Law School, Ronald F. Phillips, set forth to Mr. Lindmark eight (8) allegations of misconduct on the part of Mr. Lindmark, and advised Mr. Lindmark that for those reasons he was being placed on disciplinary probation. Said letter is annexed hereto as Exhibit "A".

6. Mr. Lindmark appealed Dean Phillips' determination of disciplinary probation (N.T. Pg. 11) and an ad hoc faculty committee was elected by the faculty to consider the appeal. The ad hoc committee considered Mr. Lindmark's appeal on February 9, 1983 and considered in depth, allegation 7 and allegation 6, finding both allegations to have been supported by the evidence, and the discipline imposed, reasonable and deserved. The report of the ad hoc committee, dated February 9, 1983, is annexed hereto as Exhibit "B". The committee did not proceed to examine allegations 1,2,3,4,5 and 8, finding that the substantiation of allegation 7 (misuse of a "referral from the Career Planning Office to make incredible and outrageous demands beyond any bounds of propriety of reasonable judgement") and allegation 6 (that Mr. Lindmark "lied about his class standing in an attempt to

gain employment"), fully justified the sanction imposed by Dean Phillips.

7. Mr. Lindmark then appealed the February 9, 1983 decision by the ad hoc committee to Pepperdine Law School Executive Vice-President, David Davenport, who, under date of 9/16/83, denied Mr. Lindmark's appeal. Mr. Davenport's denial was the final step in the University's internal disciplinary process.

8. Mr. Lindmark then consulted private counsel as to whether he should proceed against Pepperdine University in court, and was advised that he should do nothing until he graduated (N.T. Pg. 15).

9. In May, 1983, Mr. Lindmark received his J.D. Degree from Pepperdine Law School and in October, 1983, he filed a lawsuit in the Superior Court of the State of California, naming as defendants, Pepperdine Law School and University and several of its officials. In this lawsuit, Mr. Lindmark claimed breach of contract by the University, breach of implied covenant for fair dealing, denial of due process and asked for appropriate damages and relief.

10. A trial in the aforesaid action was held in October, 1989 and the Court entered a non-suit (N.T. Pg. 22). Mr. Lindmark has taken an appeal from that determination of the Trial Court. The appeal is still pending.

11. We conclude that in his letter dated 12/27/90 to Mrs. Katherine Palmer of the Southern California Edison Company, Mr. Lindmark intentionally misrepresented his class standing in an attempt to gain employment.

12. We conclude that on 8/12/82 in a letter to Mr. John Bury, Vice President and General Counsel of the Law Department of Southern California Edison, Mr. Lindmark misused the referral from the Career Planning Office of Pepperdine Law School to make demands characterized by Mr. Bury as "incredible and outrageous beyond any bounds of propriety or reasonable judgement".

13. We conclude that in a letter to Dean Phillips dated 8/2/82, Mr. Lindmark verbally attacked a classmate because she was not cooperating with Mr. Lindmark's efforts to challenge a grading system (from the "pass" or "fail" that was given, to a percentage grade demanded by Mr. Lindmark. Mr. Lindmark wrote to Dean Phillips in this connection, "It is but an indication of her [his classmate, Ms. Gray] irresponsible and unprofessional character in frustrating justice and a search for the truth in resolving this grievance. If this had been her conduct it should be reported to the State Bar for a pre-admission investigation." (Quotation from allegation 5 in Dean Phillips' letter dated November 29, 1983.)

14. At the hearing before this Board on 9/24/90, Mr. Lindmark asserts that his actions, his letters and the positions he took in 1982 and 1983 were correct and justified. The passage of 8 years has not modified his judgment in those matters. We conclude that were comparable matters to arise today, Mr. Lindmark, would exercise the same judgment upon them as he exercised in 1982 and 1983. We conclude that were Mr. Lindmark a lawyer today, and were he to become involved in matters analogous to those in which he was in involved and in which

he acted in 1982 and 1983, his actions and judgment would be similar.

15. We conclude that such judgment and actions on the part of Mr. Lindmark are clearly incompatible with the standards expected to be observed by members of the Bar of the Commonwealth of Pennsylvania as required by Rule 203(a)(3).

16. The Board has considered the character reference letters submitted by Mr. Lindmark from Mr. Hokanson, Mr. Cain, Mr. Levin and Mr. Murray.

Discussion

Upon a consideration of the entire record, including the testimony of Mr. Lindmark and all the Exhibits, we conclude and decide that Mr. Lindmark's prior conduct and his present character and qualifications are incompatible with the standards expected to be observed by members of the Bar of this Commonwealth, as required by Rule 203(a)(3).

The precipitating event in 1982 for this series of events, was the grading of a course in legislation that Mr. Lindmark took at Pepperdine Law School in 1982 (N.T. Pg. 8).

Mr. Lindmark was given ("P") a passing grade in that course but he demanded to be given a percentage grade contending that a percentage grade would have a different, and as he thought, more advantageous, impact on his general and composite score. Five or six other students had taken the course with Mr. Lindmark, and Mr. Lindmark undertook to organize them in an appeal to the Law

School. In the course of this effort on the part of Mr. Lindmark, he made certain misrepresentations to the Law School and to the University Authorities, and he also made the above quoted comments concerning Ms. Gray, who refused to participate in Mr. Lindmark's efforts.

At about the same time, Mr. Lindmark had applied for a position in the legal department of Southern California Edison. He was interviewed and given equal treatment with the other law student applicants. When he did not obtain the position he attacked the interviewer in a manner totally unjustified and excessive. Mr. Lindmark's letter, embodying his attack on the interviewer, is attached to this record and speaks for itself. Mr. Lindmark's conduct in this regard was one of the allegations against him as a basis for the disciplinary probation. While that letter was written by Mr. Lindmark 8 years ago, we perceive that Mr. Lindmark still asserts that his actions were correct and appropriate.

We conclude that his actions and conduct were inappropriate and were in fact reprehensible. A lawyer must be able to receive adverse decisions without breaking out in diatribe against the Court, the Judge, opposing counsel, or the system itself.

As we have previously noted, we conclude that if Mr. Lindmark were a lawyer today, and were involved in the matters analogous to those in which he was involved and in which he acted, in 1982 and 1983, his actions and judgment would be similar, and would constitute infractions of the "Rules of Professional Conduct" which indicate the character and general qualifications which are

expected to be observed by the Bar of this Commonwealth.

Mr. Lindmark's inability to accept adverse decisions with decorum, self-control and good sense fails to comport with the requirements of Rule of Professional Conduct (herein RCP) 8.2(b): "A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

The self-serving manner in which Mr. Lindmark knowingly misrepresented his class standing in 1983, if done by a lawyer in an attempt to obtain a client, would come close to a violation of RCP 7.1, "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."

The false statement of fact made by Mr. Lindmark to the University Committee and officials passing upon his conduct, if done by a lawyer to a tribunal, would lack the "candor towards the tribunal" posited by RCP 3.3.

We conclude that the applicant's conduct as reflected in this record, if he were a lawyer at the time, would constitute violations of RCP 8.4 "misconduct" in having engaged in conduct involving misrepresentation, and in having engaged in conduct that is prejudicial to the administration of justice.

Conclusion

For the above reasons, we find that the applicant lacks the character and general qualifications compatible with the standards expected to be observed by members

of the Bar of this Commonwealth, as required by Rule 203(a)(3).

Adjudication

Now, January 22, 1991, the Pennsylvania Board of Law Examiners formally adjudicates that the application of Roger M. Lindmark to sit for the Pennsylvania bar examination is denied.

BY THE BOARD:

/s/ Carol K. McGinley
Judge Carol K. McGinley
Chairperson

[Exhibit "A" to 1991 Adjudication]

Pepperdine University
School of Law

November 29, 1982

Mr. Roger Lindmark
30147 Cuthbert Road
Malibu, California 90265

Dear Mr. Lindmark:

Over the past several months I have had the opportunity of observing your conduct in a number of situations. You have exhibited either an inability or an unwillingness to deal honestly or accurately with facts. Your letters, memoranda and overt conduct demonstrate the frequency with which you have viciously attacked others without

provocation. You have displayed a serious lack of judgment in your dealings with various people. I have felt compelled, both in my role as Dean of the School of Law and as a member of the legal profession, to carefully consider what appropriate action should be taken to safeguard the interests of the School of Law and its students, and the legal profession.

Among the specific matters of concern I have are those related to the various situations which I will describe below.

1. You deliberately lied to the President and the Executive-Vice President of the University about having exhausted certain appellate rights at the School of Law.

> During the spring semester of 1982, you prepared a petition relating to the course in Legislation. The petition was considered by the Examination and Grading Committee and denied. I stated in that meeting that you should provide in writing whatever it was that you were appealing and that I would give it careful consideration. Knowing this, and without having provided the requested written appeal to me, you falsely represented to the central administration of the University that you had exhausted your remedies at the Law School and were therefore appealing at that level.

2. You deliberately misstated your authority to represent other students.

> In your letter of June 10, 1982 to Dr. Luft, you stated that you were acting "as spokesman for the student petitioners." In your letter of June 14, 1982 addressed to me, you even stated that you had received prior verbal approval from

three named classmates for the content of that letter. Members of the class have indicated otherwise. In fact, one such individual, Larry Pellett, wrote a note to me on the very same day indicating that you had no authority to represent him and that he had learned of the contents of that letter only after it had been delivered to my office, although you and he had generally discussed your appeal.

Thereafter, I wrote each member of the class and asked whether you were representing them as you had claimed in your various letters and memoranda. Not a single member of the class contacted me with an affirmative response, although negative responses were received from some.

On page four of your letter of June 13, 1982 you appear to acknowledge that you had not received the approval from others in the class for your June 14 letter as you had claimed in that letter.

3. You intentionally mislead [sic] other students about my handling of your appeal.

A reading of your letter of June 14 reveals that you misrepresented to other students what took place during the meeting you and I held. I did not state on that occasion that I "didn't want to hear any more about the matter," although I did indicate that I did not want to further the discussion we were having, but would rely on the written appeal which I had requested. You stated in the same letter that other students (relying upon your representation of our meeting) decided that I had made a final decision of

refusing to deal with the matter. Other students deny that they had reached any such conclusion.

You indicated in the same letter that there was agreement among the students that I held "an absolute misunderstanding or lack of recall as the facts . . . " Other students in the class deny this.

4. Without any foundation, you accused Professor Morse, Dean McGoldrick and me of being willing to commit or having committed a serious breach of personal and professional ethics.

In our meeting of March 30, you indicated that both the Professor in the Legislation course and I would like to protect our own positions. In your letter of June 23, 1982 you acknowledge having made this inflammatory statement.

In connection with still another petition which you recently filed and then appealed, Dean James M. McGoldrick stated that you indicated that you planned to take the California Bar Examination without any real expectation of passing it, and then take the Wisconsin summer examination. In your letter to Dean McGoldrick on October 28, 1982, you took exception to Dean McGoldrick's report of your conversation and stated, "Your last sentence in this paragraph is an absolute lie."

5. You have made or claimed to have made outrageous and untrue allegations about a fellow student to the Caiifornia State Bar without the slightest substantive support.

Some of your classmates indicated that you had pressured and harassed them in an effort to

force them to go along with your crusade. In a letter to me dated August 2, 1982 you attacked a classmate because she was not cooperating with your efforts. You wrote, "If Ms. Gray has not responded to you by now *I would presume* that she has no intention to and has decided to opt out of the dispute. It is but an indication of her irresponsible and unprofessional character in frustrating justice and a search for the truth in resolving this grievance. If this has been her conduct it should be reported to the State Bar for a pre-admission investigation."

Subsequently, you made an appointment to speak with Ms. Marilyn Palumbo, a graduate of the Law School who is working this semester as a student recruiter. She has reported that you told her on that occasion that you had "told the State Bar that Ms. Gray was obstructing an official investigation by Pepperdine Law School" and that she was "irresponsible and should not be admitted to the Bar of this state." Ms. Palumbo stated that you told her that you had a copy of the letter in your possession at the time of the meeting.

Ms. Palumbo then talked with Ms. Gray who stated that you had threatened to contact the State Bar if she did not help you pursue your grievance.

6. You lied about your class standing in an attempt to gain employment.

Another matter of great concern relates to your actions in connection with your effort to get a job with the Southern California Edison Company. In a letter to Ms. Katherine Palmer of the Southern California Edison Company on July 27,

> 1982 you wrote, "This past year I have been in the top one-third of my class." That statement is not true. You [sic] cumulative grade point average at the time was 73.94. The top third of the class began at 77.40. Your cumulative average placed you nearer to the bottom one-third which went up to 73.91. Your [sic] may have been claiming that your yearly average for your second year work would be in the top third of your class. The records office does not report to students a yearly class standing, as opposed to that which is cumulative. However, even on a yearly basis, you were not in the top third of your class, but rather ranked number 106 out of 208 placing you in the bottom half for the year. This misrepresentation of class standing in order to secure a job interview appears to be part of a total pattern of intentional misrepresentation and is an extremely serious matter.

7. You misused a referral from the Career Planning Office to make incredible and outrageous demands beyond any bounds of propriety or reasonable judgment.

> On August 11, 1982 you wrote Mr. John Bury, Vice-president and General Counsel of the Law Department of Southern California Edison, with copies to Mr. William R. Gould, Chairman of the Board and Mr. C.E. Hathaway, Vice-President of Human Resources. In your letter you complained that someone else was hired for the job for the stated reason that he had related work experience when neither the job description nor the interview made mention of a desire for such experience. (The job listing did ask for a background in labor law.) You then went on to write, "Law students' time is very valuable and generally their financial resources are too scarce, as

mine are, to be spent on wild goose chase job searches which entail 100 mile round trip journeys which your interview cost me. I am a professional having attended six universities with a Master's Degree in Clinical Psychology and about to receive a J.D. in December and I expect to be treated professionally when I drive 100 miles for an interview for a job I desperately need to help pay tuition and living cost." Your letter further stated "actually nothing of real substance was investigated during the interview which was a waste of time and a farce." The letter continues, "The entire job search and interview was conducted unfairly and unprofessionally at my expense of time and money. Such an expense in all justice should not be borne by a poverty struck law student struggling to pay tuition in the face of a major corporation which did not play fair in employee searching and advertising this job.

"I demand to be reimbursed at the rate of .25¢ per mile for the 100 mile trip I took for an interview which should have never have taken place since experienced clerks were preferred. In all justice and out of professional duty $25.00 is owed to me." It is ironic that after misrepresenting your credentials in seeking the job you charged that the Edison Company was unfair and unprofessional.

8. You misstated a School appellate procedure to an outside executive in such a way as to make it appear that I had committed some serious breach of duty.

On October 6, 1982 Mr. John W. Evans, Assistant Counsel for Southern California Edison wrote to me that you called him and said that you and a

> few other students were in the process of "dragging [me] before a board of review within the Pepperdine University system." Such a representation was patently false. The truth of the matter was that you had appealed to a University committee the decision that I ultimately made, denying your petition to reverse the relative weight between the examination and a paper in the course in Legislation. I did not attend the hearing. The Committee upheld the decision I had made.

Because of your unacceptable conduct relating to your effort to secure employment with the Southern California Edison, you will no longer have access to the services of the School of Law Career Planning Office.

Expressions of concern for your suitability for law practice have been expressed by individuals both within and without the School of Law. It is my judgment that you are not at this time a suitable candidate for admission to the bar. It is my intention to write the State Bar of California as well as the bar of any other state in which you seek to practice law to inform them of my concerns about your conduct and reputation.

It may be that the root of your problem is one of mental or emotional instability that can be aided by professional treatment. If that should be the case, I strongly recommend that you seek help immediately.

The pattern which you have established of misrepresentation, outrageous attacks upon other people, intimidation, and irresponsible behavior are inconsistent with the values and standards of Pepperdine University School of Law. The School of Law catalog provides, "Violations of

School policies and regulations or conduct inimical to the best interests of the School or to other students may, after appropriate hearing, lead to suspension, dismissal or withholding the granting of a degree."

The School of Law catalog further provides, "The Pepperdine Law Student is required to abide by the Code of Professional Responsibility adopted by the American Bar Association" and specifically sets out section EC1-5 which provides that "A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified and he should refrain from all illegal and morally reprehensible conduct."

It is my belief that your conduct over the past several months has been such as to warrent [sic] dismissal from the School of Law. Nonetheless, I have decided to give you an additional opportunity to demonstrate a sense of responsibility for your actions. In any event, your conduct has been inconsistent with that which is required for good standing. Therefore, you are hereby placed on disciplinary probation.

You are also warned, that any further acts of misrepresentation or other conduct inimical to the best interests of the School or to other students will result in your dismissal.

Should you decide to appeal the action that I have taken in this letter, the appeal will be referred to a committee of Law School professors elected by the faculty to handle such matters. The basis for any appeal should be

submitted to my office in writing and it will be forwarded to the review committee.

Sincerely,

/s/ Ronald F. Phillips
Ronald F. Phillips
Dean, School of Law
RFP:np

[Exhibit "B" to 1991 Adjudication]

PERSONAL AND CONFIDENTIAL

MEMORANDUM

To: Dean Ronald F. Phillips

From: Ad Hoc Committee (Roger Lindmark Appeal)

Date: February 9, 1983

This committee was elected by the faculty for the specific purpose of determining whether you had a reasonable basis for taking the course of action that you did in relation to Roger Lindmark.

This committee, having reviewed the file in this case, finds as follows:

1. With respect to allegation 7, set forth in your letter of November 29, 1982, wherein it is asserted that Mr. Lindmark "misused a referral from the Career Planning Office to make incredible and outrageous demands beyond any bounds of propriety or reasonable judgment," this committee finds that Mr. Lindmark did misuse a referral from the Career Planning Office. This committee concludes (a) that Mr. Lindmark has engaged in "conduct inimical to the best interest of the School" (p. 43, Pepperdine University

School of Law Catalog, 1982-83), and (b) that the sanction imposed, i.e., precluding Mr. Lindmark from further use of the services of the Career Planning Office, was reasonable.

2. With respect to allegation 6, set forth in the same letter, wherein it is asserted that Mr. Lindmark "lied about [his] class standing in an attempt to gain employment," this committee finds that (a) Mr. Lindmark did, in fact, misrepresent his class standing, and (b) that the purpose of said misrepresentation was to secure employment that the sanction imposed, i.e., placing Mr. Lindmark on disciplinary probation, was fully justified. There is no doubt that several other, more severe sanctions could have been imposed (see p. 43, Pepperdine University School of Law Catalog, 1982-83). In the view of this committee, the sanction imposed was a lenient one.

Because this committee finds that the sanctions imposed are fully justified by the nature of the conduct set forth in allegations 6 and 7, there is no reason for the committee to inquire into, or make findings regarding, the assertions concerning Mr. Lindmark's conduct that are set forth in allegations 1, 2, 3, 4, 5, and 8.

DC:da

/s/ [Five Illegible Signatures]

APPENDIX F

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

ROGER M. LINDMARK, Petitioner	:	No. 32 E.D. Misc. Dkt. 1991
v.	:	
PENNSYLVANIA BOARD OF LAW EXAMINERS	:	

ORDER

PER CURIAM:

AND NOW, this 11th day of February, 1992, the Petition for Reconsideration is granted.

TRUE COPY FROM THE RECORD
Attest: February 12, 1992

/s/ Patricia Johnson
PATRICIA JOHNSON,
Assistant Chief Clerk – Eastern Dist.
Supreme Court of Pennsylvania

APPENDIX G

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

ROGER M. LINDMARK,	:	No. 32 E.D.
Petitioner	:	Misc. Dkt. 1991
v.	:	
	:	
PENNSYLVANIA BOARD OF LAW EXAMINERS	:	

ORDER

PER CURIAM:

AND NOW, this 22nd day of April, 1992, the Petition for Clarification of Order is granted and petitioner is hereby permitted to sit for the next scheduled Bar Examination.

TRUE COPY FROM THE RECORD
Attest: April 23, 1992

/s/ Patricia Johnson
PATRICIA JOHNSON,
Assistant Chief Clerk – Eastern Dist.
Supreme Court of Pennsylvania